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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ARMANDO J. REYNOSO, Plaintiff and Respondent, v. JAMES GLENN FLOYD, Defendant and Appellant.	B157694 (Super. Ct. No. EC034053)

APPEAL from an order of the Superior Court of Los Angeles County. William D. Stewart, Judge. Reversed and remanded with directions.

Veatch, Carlson, Grogan & Nelson, Craig H. Bell, Jill A. Thomas; Early, Maslach, & Rudnicki and Vincent P. Cicone for Defendant and Appellant.

Oscar E. Toscano for Plaintiff and Respondent.

A jury awarded plaintiff Armando Reynoso economic and noneconomic damages for injuries he suffered in a car accident involving defendant James Glenn Floyd. Reynoso moved for a new trial on several grounds, including inadequacy of the noneconomic damages award. The trial court granted the motion and ordered a new trial limited to the issue of noneconomic damages.

Floyd contends the trial court abused its discretion in declining to order a new trial on all issues. In the alternative, he contends, "at a minimum," the trial court should have ordered a new trial on both economic and noneconomic damages. Based on the specific circumstances of this case, we agree with Floyd's latter contention. Accordingly, we reverse the order and remand the matter for a new trial on both economic and noneconomic damages.

FACTS AND PROCEEDINGS BELOW

Witnesses testified to the following facts at trial:

Before the accident, plaintiff Reynoso was driving his pick-up truck west on Alameda in the right-hand lane between 6:00 and 7:00 p.m. Alameda curves before it intersects with Main Street. Reynoso reduced his speed as he drove through the curve. As he came out of the curve, he increased his speed and shifted his truck into fourth gear. Reynoso usually shifts into fourth gear at a speed of 30 to 35 miles per hour. He estimates this is the approximate speed he was traveling as he approached the Alameda-Main Street intersection.

After Reynoso drove through the curve, he saw defendant Floyd's car enter the Alameda-Main Street intersection. Floyd was traveling east on Alameda and he was preparing to turn left (north) onto Main Street. Reynoso observed Floyd was not looking forward. Instead, "he was turned a little bit . . . trying to look back." According to Reynoso, Floyd proceeded to turn left in front of him as Reynoso approached the crosswalk at the intersection. Reynoso claims he had a green light as he entered the intersection.

Reynoso "slammed" on his brakes and tried to swerve his truck out of the way of Floyd's car. Reynoso recalled Floyd had almost completed his left turn and his car was leaving the intersection at the time of impact. Reynoso's truck hit the front tire and door of Floyd's car.

When the vehicles collided, Reynoso hit his forehead on the rearview mirror and the windshield of his truck. According to Reynoso, both the mirror and the windshield "broke." Reynoso explained "[his] hand grabbed on the steering wheel which went forward and hit [his] dashboard." Reynoso's chest hit the steering wheel. After the accident, the steering wheel was "bent."

Floyd's account of the accident differs from Reynoso's version. According to Floyd, he was traveling east on Alameda with his wife and daughter in the back seat of his car. The light was green as he entered the left-hand turn lane and moved into the Alameda-Main Street intersection, preparing to turn north onto Main Street. As he was sitting in the intersection, waiting to make his turn, he noticed a car traveling west on Alameda in the inside lane had stopped at the intersection.[1] He looked up at the light and noticed it had turned red. He thought to himself: "I'm sitting here on a red light, I'm blocking traffic, I need to clear the intersection." He saw no cars coming, so he proceeded to make his turn.

As Floyd entered the inside lane for cars traveling west on Alameda, his wife screamed. He "turned around to see what she was screaming about." When he turned back, he saw Reynoso's truck hit his car. At the moment of impact, Floyd's car was "midway between" the two lanes for westbound traffic on Alameda, and moving at about two to three miles per hour. Floyd claims he had no time to apply his brakes. He could not estimate the speed of Reynoso's truck before the accident. The impact of the collision caused his car to move "sideways" about two feet.

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[1] Apparently neither Reynoso nor the other eyewitness to the accident (identified below) saw this car.

Britta Hamrick witnessed the accident. She was stopped at a red light on Main Street, facing south. She was in the left-hand turn lane, getting ready to turn east onto Alameda. There were three children with her in her Chevrolet Suburban.

Hamrick saw Floyd preparing to turn north onto Main Street. He was turned around, facing a woman in the backseat and talking to her. He had his arm on the front passenger seat. Hamrick saw Floyd's vehicle "inch[ing]" its way into the intersection.

Hamrick did not notice Reynoso's truck before the collision because of the curve on Alameda. She just "saw something dark come at" Floyd's car. When the two vehicles collided, Hamrick saw Reynoso's head hit the window. The impact of the collision pushed the vehicles toward Hamrick's car. After the accident, Hamrick noticed the light on Main Street was still red. This was 30 to 40 seconds after she had first noticed the red light.

Hamrick believed Reynoso might have tried "to swerve out of the way of [Floyd's] car." She did not see Reynoso do anything wrong to cause the accident. Reynoso called Hamrick to testify at trial.

Immediately after the accident, Reynoso was dizzy and he was bleeding. Paramedics took him to the hospital (St. Joseph's Medical Center). Reynoso complained about throbbing pain and swelling in his forehead and hand. The emergency room surgeon told Reynoso he "had a hole about the size of a golf ball in [his] forehead down to [his] skull," but no skull injury. There was glass and plastic debris from the rearview mirror in his wound. The surgeon cleaned it out and stitched it up. Reynoso received 48 stitches. He was released from the hospital the same day. He had two follow-up appointments with the surgeon.

The day after the accident, Reynoso began to feel pain "[a]long [his] neck down to [his] shoulders" and a "little bit on [his] lower back." The pain from his neck radiated down his shoulders and into his arm, from his hand to his thumb. The pain was greater on the right side of his body.

Reynoso stayed out of work for three days following the accident. As part of his job, he moved video rental equipment. Reynoso made $10.00 an hour. When he returned to work, he felt pain when he tried to move some of the equipment. He asked his co-workers to help him move the heavier objects. Before the accident, Reynoso had not experienced any pain when he performed his job.

Reynoso told his attorney about his pain. The attorney referred him to a chiropractor. The neck and back pain resolved "quickly" after Reynoso started seeing a chiropractor and receiving therapy, about 10 days after the accident. Reynoso received chiropractic treatment over a three-month period. At the time of trial, Reynoso estimated he was 98 percent recovered. Every few months, he would experience pain in his arm and thumb when he lifted heavy objects at work.

Reynoso claims he will need future surgery to remove the residual scarring on his forehead. A doctor informed him the laser surgery procedure would take place in two or three "stages," at a cost of $1,850 per stage. Reynoso made the following comments about his scar: "I hate it. Every time I wake up and look in the mirror it just takes me back to the day the accident happened. I don't like it. It's ugly to me."

Reynoso estimated his truck was worth about $2,500 at the time of the accident. A few months before, he had spent about $2,300 to fix it up. Reynoso could not drive the truck after the accident because it was "totaled." He paid $136 to get it out of the tow shop.

Reynoso filed this negligence action against Floyd, seeking damages for injuries to his person and property. At trial, Reynoso informed the jury he was seeking $15,237.25 in economic damages: $10,511.25 in past medical bills, $1,850 to pay for a future surgery "to clean up the scar" on his forehead, $2,500 for damage to his truck, $240 in lost earnings, and $136 for the cost to tow his truck. He also requested noneconomic damages for the pain and suffering he had endured as a result of his injuries. For the scar on his forehead, Reynoso suggested the jury award him "$2 per day for the rest of his life."

Reynoso's chiropractor, Dr. Samir Daher, testified at trial. He treated Reynoso for about three months, beginning 10 days after the accident. Reynoso complained about "neck pain that radiate [sic] to both shoulders, right and left arm pain, right thumb pain, and . . . minimum chest pain."

Dr. Daher examined Reynoso and ordered x-rays of his cervical spine and right shoulder. He determined Reynoso was experiencing spasms in his upper spine and shoulders, and had limited motion in his cervical spine. The radiologist who read the x-rays reported there was "evidence of a moderate muscular spasm" in the cervical spine but not in the right shoulder.

Dr. Daher performed some "objective" tests on Reynoso to determine whether he was "malingering or . . . exaggerating his symptoms." Both the "Foraminal Compression" test and the "Soto-Hall" test were positive, indicating Reynoso had "radiating pain" in the "mid portion of the spine." The tests also revealed Reynoso's "range of motion was reduced by 25 percent." Dr. Daher found Reynoso to be "[v]ery credible," and he concluded Reynoso had "a very high threshold of pain."

Dr. Daher prescribed physical therapy and chiropractic care for Reynoso. At the conclusion of the treatment, Dr. Daher determined Reynoso had "recovered well" and had "minimum or no residual [sic]."

Floyd called Dr. Louis Vasquez to testify as his medical expert at trial. Dr. Vasquez is a board certified orthopedic surgeon, who has practiced in this field for more than 30 years. He reviewed Reynoso's medical records from the hospital and the chiropractor. He did not examine Reynoso because the accident occurred years before Dr. Vasquez got involved in the case.

Dr. Vasquez read to the jury excerpts from the emergency room report, describing Reynoso's condition on the day of the accident. Based on his examination, the emergency room physician determined the following, among other things: Reynoso's "chief complaint" was pain in his forehead where he had a "complex macerated laceration." Reynoso had "a slight complaint of pain in his right thumb and index

finger." He had a "superficial laceration" on his right thumb which did not require a suture.

Reynoso had "no complaint of any neck or back discomfort whatsoever." His neck was "supple." There was "no vertebral tenderness" and the range of motion in his neck was "full." Reynoso's thoracolumbar spine was nontender and he had "full range of motion without complaint of pain." Reynoso "denie[d] any discomfort in his chest, abdomen, pelvis, or other extremities."

Based on his review of Reynoso's medical records, Dr. Vasquez concluded Reynoso had no need for any chiropractic treatment. Dr. Vasquez noted Reynoso did not have any complaints about neck or back pain on the day of the accident. Ten days later he sought chiropractic treatment. Dr. Vasquez "wonder[e]d what happened to [Reynoso] in those ten days if he didn't have anything to begin with except this laceration of the forehead, and now he's got all these spinal problems." According to Dr. Vasquez, it is possible "[a] person who lifts heavy boxes would have back problems."

Dr. Vasquez reviewed the x-rays taken at the chiropractor's office. He said he did not "believe" the radiologist's report indicating there was evidence of a moderate muscular spasm. He commented: "You can't see muscle spasm on x-ray because all you can see is the bone . . . ." Dr. Vasquez also stated a patient can "fake" a positive Soto-Hall" test and a muscle spasm. He conceded "a trained physician could discern the difference" between a real and a fake muscle spasm.

Floyd also called Dr. Herbert Summers to testify as trial. Dr. Summers has a Ph.D. in physics, and has been an accident reconstruction expert for more than 13 years. Dr. Summers testified about the "phasing" of the traffic signals at the Alameda-Main Street intersection. Based on his research, Dr. Summers explained the signals for traffic on Alameda are green for 31 seconds and yellow for three seconds. When the signals on Alameda turn red, the signals on Main Street remain red for one second before turning to green. Thus, there is one second when all of the signals at the intersection are red. Dr. Summers concluded Floyd's testimony he entered the intersection on a green light, and began his turn on a red light, is consistent with the phasing of the signals.

Dr. Summers calculated the minimum speed each vehicle was traveling at impact, based upon the weight of the vehicles and the damage they sustained in the crash. He testified Reynoso's minimum speed was 15 to 20 miles per hour, and Floyd's minimum speed was seven and a half to 17 miles per hour. He estimated about two or two and a half seconds elapsed between the time Floyd began his turn and the vehicles collided.

Assuming a minimum speed of 20 miles per hour, Dr. Summers testified Reynoso's truck was outside the intersection when Floyd began his turn. Based upon the phasing of the traffic signals, and Floyd's testimony he began his turn when the light on Alameda was red, Dr. Summers concluded Reynoso entered the intersection on a red light.

After deliberating for a few hours, the jury reached a verdict and returned the special verdict form. By a vote of eleven-to-one, the jury found Floyd was negligent, and his negligence caused injury or damage to Reynoso. By a vote of nine-to-three, the jury found Reynoso's economic damages were $14,000 and his noneconomic damages were $2,500. By a vote of eleven-to-one, the jury found Reynoso was negligent, and his negligence was a cause of his injury or damage. By a vote of nine-to-three, the jury found 65 percent of the total negligence which caused injury to Reynoso was attributable to Floyd, and 35 percent was attributable to Reynoso. In accordance with the jury's verdict, the trial court entered judgment in favor of Reynoso and against Floyd in the amount of $10,725.

Reynoso moved for a new trial and additur, arguing, among other things, (1) the evidence does not support the jury's finding 35 percent of the total negligence was attributable to Reynoso, and (2) the noneconomic damages were inadequate. The trial court found there was sufficient evidence of Reynoso's negligence. But it agreed with Reynoso's assertion the noneconomic damages award was "wholly inadequate." Based on the evidence presented at trial, the court decided the jury should have awarded Reynoso at least $12,500 in noneconomic damages, "before reduction for [Reynoso]'s negligence."

The trial court issued an order, conditionally granting the motion for new trial on the issue of noneconomic damages only, unless Floyd agreed to an increase in the judgment in the amount of $6,500 (a net increase in the noneconomic damages award of $10,000, offset by Reynoso's 35 percent negligence). Floyd rejected the additur and appealed from the order granting a limited new trial.

DISCUSSION

I. THE TRIAL COURT DID NOT ERR IN DECLINING TO ORDER A NEW TRIAL ON ALL ISSUES.

Floyd contends "the trial court abused its discretion in not granting a retrial on all issues" because "there was a probability that the verdict was a result of a compromise of the liability/apportionment of fault issues." Floyd argues "the granting of a complete new trial is necessary so that no injustice will result to [him]."

The purpose of a limited new trial "is to expedite the administration of justice by avoiding costly repetition."[2] "'The decision on limiting a new trial to the issue of damages rests in the first instance in the sound discretion of the trial judge.'"[3] A trial court may order a new trial limited to damages "'where it can be reasonably said that the liability issue has been determined by the jury'"[4] and "it is clear that no injustice will result."[5] The trial court should resolve any doubts about whether a limited new trial is appropriate "in favor of granting a complete new trial."[6]

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[2] *Leipert v. Honold* (1952) 39 Cal.2d 462, 466.

[3] *Liodas v. Sahadi* (1977) 19 Cal.3d 278, 285.

[4] *Liodas v. Sahadi*, *supra*, 19 Cal.3d at page 285.

[5] *Leipert v. Honold*, *supra*, 39 Cal.2d at page 466.

[6] *Leipert v. Honold*, *supra*, 39 Cal.2d at page 467.

Absent an abuse of discretion, we will not reverse the trial court's decision granting a limited new trial on damages.[7] An abuse of discretion "is shown when the damages are inadequate, the record discloses that the issue of liability is close, and other circumstances indicate that the verdict was probably the result of prejudice, sympathy, or compromise or that for some other reason the liability issue has not actually been determined."[8] For example, a compromise verdict is indicated when a jury awards a plaintiff damages, but the amount is far less than the sum it would take to compensate the plaintiff for his injuries.[9] Where a "jury has, by compromising the issues of liability and damages, inextricably interwoven those issues, a retrial of the damages issue alone based on the erroneous assumption that defendant's liability has been determined would be extremely unjust to [the defendant]."[10] "'When a limited retrial might be prejudicial to either party, the failure to grant a new trial on all of the issues is an abuse of discretion.'"[11]

Applying these principles to the matter before us, we conclude the trial court did not abuse its discretion in declining to order a new trial on all issues. As discussed more fully below, the record in this case does not indicate a compromise verdict.

As Floyd points out, "'[a] failure to allow for *undisputed* special damages . . . is one circumstance which the courts have considered as being some indication of a

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[7] *Liodas v. Sahadi*, *supra*, 19 Cal.3d at page 285.

[8] *Leipert v. Honold*, *supra*, 39 Cal.2d at page 467.

[9] See, e.g., *Hamasaki v. Flotho* (1952) 39 Cal.2d 602, 606 ("[h]ad the jury truly believed that defendants were liable [for causing the plaintiff's injuries, including a brain concussion, broken clavicle and skull fractures], the verdict would have been for many times" the amount it was); *Leipert v. Honold*, *supra*, 39 Cal.2d at page 468 ("[t]he record shows that the jury had great difficulty with these [liability] questions and indicates that its verdict [awarding inadequate damages] was probably the result of compromise"); *Murphy v. Wilson* (1956) 141 Cal.App.2d 538, 545 (in an action arising out a car accident, "[t]he fact that the jury found in favor of each of the children and yet did not even award nominal damages indicates a compromise verdict").

[10] *Hamasaki v. Flotho*, *supra*, 39 Cal.2d at page 608.

[11] *Liodas v. Sahadi*, *supra*, 19 Cal.3d at page 286, quoting *Baxter v. Phillips* (1970) 4 Cal.App.3d 610, 617.

compromise verdict. [Citations.]'"[12] Floyd relies on cases in which the juries awarded the plaintiffs less than the amount of special damages they requested — even though the special damages were *undisputed* — and no general damages at all.[13] In this case, Reynoso requested $15,237.25 in special or economic damages, and the jury awarded him $14,000, before the reduction for his own negligence. Those economic damages were disputed when one of Floyd's expert witnesses testified Reynoso had no need for any of the chiropractic treatment he received.

The jury also awarded Reynoso $2,500 in general or noneconomic damages. Although the noneconomic damages award may be inadequate, we do not find it to be evidence of a verdict based upon prejudice, sympathy or compromise. This is not a case in which the plaintiff has severe, permanent injuries. As a result of the accident, Reynoso missed three days of work and underwent three months of chiropractic care. At the time of trial, Reynoso said he experienced pain in his arm and thumb every few months when he lifted heavy objects at work. He also had a scar on his forehead. At the hearing on the motion for new trial, the judge said he could not see Reynoso's scar from the bench during trial, and he did not believe the jury could see it either.

Floyd asserts the fact the jury voted nine-to-three on apportionment of fault and damages is a clear indication the jury did not actually determine liability and rendered a compromise verdict. Based on the fact the jury awarded Reynoso nearly all of the economic damages he requested (before the offset for his negligence), and more than a nominal amount in noneconomic damages, we disagree with Floyd's assertion. Moreover, we note 11 of the jurors were convinced Floyd was negligent and should compensate Reynoso in some amount for his injuries.[14]

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[12] *Murphy v. Wilson*, *supra*, 141 Cal.App.2d at page 544 (italics added).

[13] *Wilson v. R. D. Werner Company, Inc.* (1980) 108 Cal.App.3d 878, 883; *Murphy v. Wilson*, *supra*, 141 Cal.App.2d at pages 543-544.

[14] Floyd argues there is other evidence in the record indicating the verdict was the result of a compromise of the liability issues. He notes the jury only deliberated for a few hours, and the jury underlined the word "visibility" on its copy of BAJI 5.30 (which sets

Floyd also argues the trial court should have granted a new trial on all issues because liability was close and "hotly contested." Based on our review of the evidence presented at trial, including the testimony of the non-party eyewitness to the accident, we conclude there was more than sufficient evidence supporting the jury's findings Floyd was negligent and 65 percent responsible for the accident.[15]

Another important factor which may indicate a compromise verdict is evidence of jury confusion. In *Murphy v. Wilson*, the main case on which Floyd relies, the jury told the trial court it was "'[s]till as confused as ever'" about the legal issues in the case, even after it had deliberated for nearly five hours and rendered its nine-to-three verdict.[16] Similarly, in *Leipert v. Honold*, the Supreme Court noted: "The jury was out 13 hours, including the time out for lunch and dinner. After it was out four and a half hours it asked to have material evidence on the issue of liability reread. Five hours later it returned a verdict that was repudiated by six of the jurors. Three and one-half hours later it brought in a nine-to-three verdict awarding $1,200 instead of the $4,300 provided in the earlier proposed verdict."[17] In both cases, the courts concluded these and other circumstances indicated compromise verdicts, and justice required complete new trials on all issues. In this case, however, there is no evidence indicating the jury was confused about any of the legal issues.

For the foregoing reasons, we conclude the trial court did not err in declining to grant a new trial on all issues. This does not end our review of this matter, however. We still must decide whether the trial court acted within its discretion when it limited the new trial to noneconomic damages as opposed to all damages issues.

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forth the "basic speed law of this state"). We are not persuaded either of these facts is evidence of a compromise verdict.

[15] In his respondent's brief, Reynoso argues the jury should have found Floyd 100 percent liable for the accident. He urges this court to find there should be a new trial not only on damages, but also on apportionment of fault. Because Reynoso did not file a cross-appeal, he has no standing to ask this court for any affirmative relief.

[16] *Murphy v. Wilson*, *supra*, 141 Cal.App.2d at pages 545-546.

[17] *Leipert v. Honold*, *supra*, 39 Cal.2d at page 470.

II. THE TRIAL COURT ABUSED ITS DISCRETION IN LIMITING THE NEW TRIAL TO NONECONOMIC DAMAGES.

Floyd argues, "[a]t a minimum," the trial court should have ordered a new trial on both economic and noneconomic damages. He contends "[t]here is simply no way to separate economic damages for medical treatment from non-economic damages for pain and suffering associated therewith . . . ."

We do not know why the jury set the economic damages at $14,000 rather than the full amount Reynoso requested ($15,237.25). Perhaps the jury did not believe Reynoso needed all of the chiropractic care he received. As discussed above, one of Floyd's expert witnesses testified Reynoso did not need any chiropractic care at all. Or, perhaps the jury did not believe it should compensate Reynoso for a future surgery to remove a scar on his forehead, which apparently no one at trial could see. It also is possible the jury discounted Reynoso's claim for property damage.

Without knowing what portion of the requested economic damages the first jury omitted, the second jury will have a problem rendering an award of noneconomic damages. For example, the second jury will not know whether it should base its noneconomic damages award on three months of chiropractic care or some shorter period of time. Nor will the second jury know how it should compensate Reynoso for the pain and suffering he has endured, and will endure in the future, because of the scar on his forehead. Should it assume the first jury's award of economic damages included some compensation for future surgery to remove the scar? Or, should it assume the first jury did not believe future surgery was warranted?

We conclude the second jury must decide the appropriate amount of economic damages before it renders its noneconomic damages award. The second jury must decide for itself which medical treatments and issues will form the basis for its pain and suffering award. Accordingly, we find the trial court abused its discretion when it limited

the new trial to noneconomic damages. We reverse the order granting the new trial, and remand the matter for a new trial on both economic and noneconomic damages.[18]

DISPOSITION

The order granting a new trial limited to noneconomic damages is reversed and the cause is remanded to the trial court with directions to vacate the judgment and order a new trial on both economic and noneconomic damages.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

JOHNSON, J.

We concur:

PERLUSS, P.J.

MUNOZ (AURELIO), J.[*]

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[18] Floyd notes he was unable to find a California case limiting a new trial to the issue of noneconomic damages. This court did not find such a case either. Despite this lack of precedent, we would not hesitate to affirm an order limiting a new trial to noneconomic damages in an appropriate case in which there was no uncertainty about the basis for the first jury's economic damages award.

[*] Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.